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## Improving the Administration of Justice in Traffic Courts

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# WASHINGTON LAW REVIEW

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## IMPROVING THE ADMINISTRATION OF JUSTICE IN TRAFFIC COURTS

*By* JAMES W. HODSON

### 1. SCOPE OF THE PROBLEM

The control of automotive traffic has become one of the great social problems of the age. Automotive traffic takes more lives than fire. It kills one person every eighteen minutes, day and night, day in and day out, three hundred and sixty-five days per year. Personal injuries occur at a rate slightly in excess of two per minute. The hourly property loss from automobile accidents is not far below \$200,000.00. This frightful toll is not confined to any segment of the population, but cuts across all classes; the young and the old, the law-abiding and the criminal, the wise and the ignorant, the rich and the poor, in short everybody who has occasion to use public streets and highways is a potential victim. In that sense, traffic accidents constitute a greater social ill than crime, which is confined pretty much to a small numerical segment of the population.

In the safety field, people speak of the three "E's", the three weapons available for the purpose of cutting down the human and economic losses resulting from traffic accidents, namely engineering, education and enforcement. Great strides have been made in the new science of traffic engineering; safety education has had the benefit of the talents of some of the best advertising and public relations brains in the country, and through the press, the schools and other media has very largely succeeded in creating awareness of fundamental rules of safety. Only in the use of the third weapon, enforcement, has there been a lag, and, although a large part of the deficiency may be laid at the door of the police, the courts and the bar cannot escape a substantial portion of the responsibility, for no matter how diligent the police may be, the ultimate disposition of the cases which they take to court is a matter for lawyers and judges.

There are several factors which have contributed to the sorry record, chief of which, perhaps, has been the attitude of the public. The public has had a tendency to resist enforcement as an invasion of personal liberty, or at least to be unsympathetic to enforcement because of a lack of consciousness of the direct relationship between the enforcement index and the accident rate. However, this attitude of apathy is a thing of the past; today the public demands enforcement, at least against all but their individual selves. People have come to realize the absolute necessity of discipline for those whose ignorance or lack of driving skill, or whose sense of irresponsibility, interferes with orderly and safe movement on the highways.

It is high time that the bar should give careful thought to that part of the problem which is legal and judicial. It is time to examine the fundamental theory of traffic law, the reason for the existence of such a body of law, and to ask whether it is being administered in tribunals equipped with proper facilities and adequate knowledge. It is time to inquire what is the purpose of traffic law, and whether its administration is such as to help serve that purpose. Such inquiry will reveal some strange and disturbing facts.

## II. THEORY OF TRAFFIC LAW

Basically, traffic law may be traced to the maxim, "public safety is the highest law." Its theory is not that of the general criminal field; most traffic violators have no criminal intent, or what the common law called *mens rea*. The basic concept is not punishment, payment of a debt to society or retribution, but safety. Although traffic law is classified as a branch of criminal law, this classification is accurate only because traffic law is not civil, and if it is not civil it must be criminal. The offense is not a private one, between individuals, but against the good order of the community, and must therefore be considered criminal, because we have no other convenient intellectual pigeonhole into which we may put it. Actually, however, in the whole long list of acts which constitute violations of the law, drunken driving and hit-and-run driving, and some instances of reckless driving, are the only offenses which can realistically be considered true crimes. And yet, we have lodged jurisdiction over traffic offenses in courts which are essentially criminal courts, courts which spend a large part of their time grinding out thousands and thousands of cases which are essentially criminal, and thereby acquiring a point of view, a psychology, if I may use that much abused word, which is unsuited to the administration of traffic law. A judge who adjusts his thinking to the problems presented by strong-arm bandits, prostitutes, gamblers, bootleggers, chronic alcoholics, knife wielders and bar-room brawlers is psychologically off guard when in the midst of the flotsam and jetsam he is suddenly confronted by

the dear old lady who has inadvertently run through a stop sign or has neglected to put a nickel in a parking meter. And the impression which the dear old lady carries home with her, after a visit to a court vested with such varied jurisdiction, is unfortunate.

### III. EFFECT OF TRAFFIC COURT EXPERIENCES ON PUBLIC OPINION

Most people never have occasion to see a supreme court in operation; those who have business with a superior court are relatively few; but every year one person in eight has occasion to visit a traffic court, either as a defendant or as a witness, or in some other capacity. By the law of averages, therefore, if by no other law, the entire population passes in review before such courts every eight years. There is where people form their all-important first impressions, which solidify into opinions, concerning all courts, all lawyers, all judges, in fact, concerning the entire judicial structure. These people are not criminals, but a cross-section of the general population. In traffic court is where they get that "day in court" which in grammar and high school they learned they were entitled to. The amount involved is usually so small as to preclude appeal, so for practical purposes, traffic court is the court of first *and last* resort for most people. Is it too much to suggest that the public's lack of confidence in the impartiality of the law is in large part traceable to experiences in such courts? Is it realistic to consider these courts unimportant, when they play such a large part in moulding public opinion concerning the legal profession?

The time has come when the administration of traffic law must be put upon a new basis. The subject must be given a place in the general scheme of things which is consistent with its importance. Such courts must be given clean, quiet, dignified quarters in which to function. There must be enough of them so that each case may be given the time it deserves. Human rights hang in the balance, and therefore the court must have the time necessary adequately to inquire into the facts and to deliberate upon the decision. Salaries of the judges and other personnel must be sufficient to attract qualified men to these positions. The traditional air of comedy and spirit of levity which have pervaded so many of the lower courts must give way to a gravity in demeanor which will impress the violator with the fact that some people consider his offense a serious matter even if he himself does not. The thoughtless references to "inferior" courts, with their unfortunate effects upon public thinking, must be replaced by the realization that there is no such thing as an inferior court; human rights are not to be graded, like apples; people either do or do not receive justice, in all courts, and are therefore entitled to the best administration which it is possible to give them. This will require drastic homeopathic treatment and considerable major surgery.

## IV. EFFORTS TOWARD REFORM—THE WARREN REPORT

A realization of the seriousness of the problem in 1938 led the National Committee on Traffic Law Enforcement and the National Conference of Judicial Councils to authorize a national survey. This was undertaken by Mr. George Warren of the New Jersey Bar, with funds provided by the Automotive Safety Foundation. The result is Mr. Warren's admirable book, "Traffic Courts,"<sup>1</sup> an exhaustive and definitive work which should be read by anyone who desires a thorough acquaintance with the subject. Mr. Warren makes fifty-seven specific recommendations, all of which have been endorsed not only by the sponsors of the survey, but also by the House of Delegates of the American Bar Association, the Junior Bar Conference, the National Safety Council and the International Association of Chiefs of Police. The book contains a thought-provoking foreword by Arthur T. Vanderbilt, former president of the American Bar Association, who is chairman of the National Committee on Traffic Law Enforcement, from which I quote:

"The traffic court has had to meet the general neglect and the political control that have all too often characterized our petty criminal courts. It has also suffered from the failure of judges, legislators and lawyers to realize that its work involved new problems of judicial administration that were quite different from those of the ordinary criminal courts. It is significant and at the same time embarrassing to the bench and bar to observe that engineers rather than lawyers were the first to see that the automobile was creating peculiar problems of law enforcement. These problems may seem unimportant to the great judge, the great lawyer and the great legislator, but as the automobile and the motor truck have changed not merely our means of transportation but our very way of life, they have brought with them problems of vast importance to society generally and to a multitude of individual citizens. These problems, it has been discovered, cannot be satisfactorily dealt with by uninformed judges, whether they be lawyers or laymen. They cannot be adequately disposed of by judges whose main interest is in other fields. The public safety and welfare, as well as due regard for the life and limb and property of individuals, call for judges with specialized training and, equally important, with special interest in traffic problems."

## V. TRAFFIC LAWS

An obvious point of weakness in the administration of traffic law lies in the law itself. Traffic ordinances and statutes are frequently phrased in vague and ambiguous language, wrapped up in superfluous verbiage, and seemingly designed to confuse. A good example is our

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<sup>1</sup> Little, Brown & Company, 1942.

own reckless driving statute, which is also a part of the Seattle Traffic Code. It defines reckless driving as driving "in such a manner *as to indicate* either a willful or a wanton disregard for persons or property."<sup>2</sup> What does such language mean? Must there be proof of intent? Must there be proof of a subjective willfulness or wantonness on the part of the driver? What does the phrase "as to indicate" mean? To whom must the manner of driving "indicate" a spirit of willfulness or wantonness? To the casual bystander who sees the defendant operate his car? To the police officer who arrests him? To the judge who hears the testimony? Skillful judging of traffic cases under such poorly drafted legislation as that is either an impossibility or else an extra-legal matter, residing in the varying degrees of horse sense possessed by individual judges. For, again remembering that most traffic violations are not true crimes, but merely *mala prohibita*, it would seem sensible to define the offenses in simple, clear and concise language. People are generally impatient of ordinances which restrain their impulses to do what they please, yet if trolley-coaches are to be able to perform their function, private cars must not be allowed to stop in bus zones; if accidents are to be prevented, drivers must not be permitted to make right turns from the center of the street or left turns from the right hand curb; the regulations which every driver must carry in his head if there is to be orderly traffic flow are so numerous that the simpler they are the better. Accordingly, traffic regulations should be drastically revised, in plain, layman's English, and should be inexpensively printed so as to permit their wide distribution among the motoring public. They should be directed toward the facilitation of traffic flow and toward the promotion of safety. They should be uniform over large geographical areas, so that what is required in one city will not be prohibited in another city a few miles away. If any of them prove to be unenforceable, they should be repealed, in order that we may in some small measure attempt to offset the attitude of disregard for law which has resulted from some of our legislative fiascos of the past.

#### VI. SUGGESTED PROCEDURAL REFORMS

Procedural reforms are also long overdue. The steps through which the traffic case must go before it reaches the judge's ear are the same steps that are required in getting any other criminal case to trial. The process is expensive in terms of time, and altogether too cumbersome for courts handling large numbers of small matters. Except insofar as necessary to protect defendant's rights, by putting him upon notice of the nature of the charge which he must be prepared to meet, there appears to be no reason why most of the antique procedural steps should not be done away with. For traffic cases are simple. There

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<sup>2</sup> REM. REV. STAT. § 6360-118, SEATTLE TRAFFIC CODE § 45.

is usually only one issue, and since the witnesses are usually only the defendant and the officer who arrested him, the judge has only to decide whether the defendant has raised a reasonable doubt. The judge is frequently forced to ground his decision on the apparent character of the witnesses before him, and a quick appraisal of their apparent devotion or lack of devotion to the truth. Not being criminals, the defendants require specialized treatment which is not necessary in other types of cases, treatment which is not contemplated by classic notions of criminal procedure. An effort must be made to avoid resentment and to enlist future cooperation in traffic law enforcement. Furthermore, traffic courts must cooperate with local and state police in maintaining individual drivers' records. This requires clerical and procedural practices different from those required in any other type of court, and calls for specialized organization of the court staff.

The traffic violator may get to court by either of two methods, by ticket or by summary arrest. Traffic tickets are issued by police, and not by the court, and therefore do not constitute summonses. Therefore, if the violator ignores the ticket, a warrant is necessary to bring him before the court. This is a cumbersome method, and some simpler way must be devised. Some cities confine the use of tickets to parking violations; all moving violations are handled by summary arrest. This has the disadvantage of taking the officer off the street and consuming time which might better be devoted to watching for additional violations, but it has the advantage of impressing the violator with the potential seriousness of his violation, and may, therefore, be worth while. However, it interrupts the defendant's journey and complicates the docketing of the court's business, and is probably not desirable except for more serious offenses.

The return day is still a feature of administration in most of our traffic courts and should be eliminated in the interest of greater economy of time. At present, the driver who gets a ticket which he thinks he does not deserve must in most cases make three trips to get the matter settled. He first reports to the Traffic Violations Bureau and requests a hearing. His case is put upon the calendar for the next day, assigned as court day to the officer who wrote the ticket. On the appointed day he appears and pleads not guilty. As often as not, the officer is not in court, and therefore the case must be set over to another day, and the officer notified to appear. If it is a minor charge, for which the established bail is \$5.00 or \$10.00, the motorist is under considerable pressure to forfeit bail rather than lose a day's pay by insisting on his right to a hearing. Such a situation should not be permitted to continue, for, obviously, the driver who thinks he has a valid defense should have an opportunity to tell his story without making such an unreasonable sacrifice. The purpose of the present method is to conserve the time

which the officer spends in court, away from his post of duty. However, the injustice to the defendant appears to outweigh the disadvantage to effective police work. Furthermore, the delay incident to the continuance provides a too obvious opportunity for putting pressure on the officer with the purpose of "softening" his testimony. A better system would be to require all moving violations to be handled in court rather than in a violations bureau, to assign each officer one day per week when he would be in court, not during his off-duty hours but on the city's time, and to have the ticket bear instructions to the motorist to appear at that time. This would permit the entire matter to be disposed of in one appearance, would avoid much clerical work now involved in following the case and securing the officer's presence in court, and would give the court the opportunity of individualizing the treatment on the basis of the defendant's apparent attitude.

Traffic courts still use long-winded formal complaints, pleading the offense in the wordy language of the ordinance. This, of course, is a carryover from general criminal practice and is designed to acquaint the defendant with the nature of the charge. As a practical matter, except to the extent necessary to protect defendant's rights, the use of such complaints seems wasteful and clumsy; the practice is continued only because the law requires it. If the facts in traffic cases were complex, there would be no objection to the practice, but traffic cases are so simple that it appears that pleading the offense by title would be not only cheaper in terms of paper and printer's ink, but actually more effective in notifying defendants of the nature of the charge. There is no real need for setting out all the component elements of the crime. A realization of this has led many courts into careless practices; in some cities, complaints are filed only when defendant pleads not guilty and there is a chance that he will have a lawyer; in others, one officer swears to all the complaints, for the entire police department; they are often signed just before, during, or even after trial, sometimes with rubber stamp facsimile signatures. One solution might be to have traffic tickets printed in the form of a complaint, to satisfy present requirements of the law. This would eliminate some of the present difficulties, but it appears that legislation simplifying the procedure would be of more thorough and more lasting benefit.

Dockets should be so arranged that different types of cases would be heard at different hours, so that parties, witnesses and lawyers would not be required to spend a half day in court waiting for a fifteen-minute hearing. The docket should be carefully kept, in duplicate, the original by the clerk and the copy by the judge, to eliminate error by providing a constant check on the court's activities in the form of duplicate minute entries. This is the practice in most large municipal courts, but a discouraging number of them keep no adequate day-to-day record of

their proceedings. The ancient practice of assessing costs separate from the fine should be eliminated. Its historic purpose, to support the court, is now outmoded, for the expenses of maintaining the court is now generally borne by the general fund of the city, the judge and the clerks being paid regular salaries. The practice is undesirable psychologically because it makes the defendant feel that he is being additionally penalized, and is in many cases close to fraud because the "costs" are mere fictitious book entries, not representing funds actually spent. Another ancient practice which should be abolished is the fee system by which judges and constables are still compensated in many places. This is nothing short of vicious, because it makes the income of the enforcement officials depend on the volume of business they can create for themselves, and gives them a direct pecuniary interest in the outcome of the cases.

#### VII. TRAFFIC VIOLATIONS BUREAUS

A striking feature of the modern traffic court is the traffic violations bureau. Originally created to serve as court adjuncts, to assist the court in the handling of thousands of small matters which do not merit the court's time, and to act as a clearing house for the thousands of traffic tickets to which there was no defense, such bureaus have had certain unfortunate results, and should therefore be critically examined in the light of experience, with a view to improving their practices. The very existence of such agencies is something new in judicial administration, for they provide a method by which an offender is called upon to pay a penalty without going to court. In general criminal practice, bail is a device for assuring a defendant's appearance in court for trial. The amount thereof is set with that purpose in mind. If defendant does not appear, the bail has failed its purpose. In traffic law, functioning through a violations bureau, the amount of bail is frequently set with the opposite purpose in mind, namely, to encourage defendant to forfeit. As a result, thousands of motorists have absorbed an attitude toward traffic regulations which is comparable to their attitude toward their water bills or light bills; they "pay a ticket" as if it were a bill without any consciousness that it is, in fact, a penalty for having violated the law. Some even go so far as to say, frankly, that it is cheaper for them to park when and where they please, and pay the penalty when they get caught, than to put their cars into parking garages or parking lots. Many seem to feel that the purpose of parking regulations is to raise revenue, overlooking completely that the regulations are designed to promote public safety and public convenience, and that law enforcement officials would be much happier if the revenue dried up completely, provided that violations of the regulations also ceased.

The traffic violations bureau should function in such a manner as to impress the motorist with the fact that he is paying a penalty and not an open account; that the less "business" the bureau has with him in the future, the happier will be his relations with the bureau; that, in short, his business is definitely not solicited, and that the traffic court is one institution which measures its success by the extent to which it can cut down the volume of its transactions. Instead of posting bail, the motorist should be required, when he does not wish to contest the ticket, to sign a written plea of "guilty" and pay a *fine*, at the same time giving the bureau a power of attorney to represent him by paying the fine into court. This would not only impress him with the fact that he is paying a penalty for a violation of law, but would also help to cure the common failure to recognize that the violations bureau is an adjunct of the court, exercising powers which are judicial, and not a part of the police department. Furthermore, the motorist who fails to respond promptly to traffic tickets should be brought in promptly, by service of a warrant, and should be required to pay an extra penalty for his delay. If he persists in accumulating tickets, even if only for overtime parking, his license should be suspended, for nothing can breed contempt for all law more effectively than the consciousness that the law may be violated, for a price, so long as one is able and willing to pay the price when apprehended.

#### VIII. CONTINUANCES

Many traffic courts are altogether too complaisant about the granting of continuances. The judges wish to keep on friendly terms with members of the bar, and sometimes permit this to go so far as to seriously impair the effectiveness of their courts. Witnesses disappear or become disgusted and fail to respond to subpoenas; the testimony becomes stale and memories faulty; time is gained for putting pressure on the officer, or for making a civil settlement with the complaining witness and thereby diluting the zeal for law enforcement which was engendered within his breast when he first surveyed his damaged car at the time of the accident. Repeated continuances are also damaging to the morale of the police officer, particularly when he knows that he has a good case and that the continuances are being requested only as part of an effort to accomplish a "fix." It appears that a general tightening is in order and that continuances should be granted only when the inconvenience of a forced appearance on the day set for trial honestly and fairly outweighs other considerations.

#### IX. JURIES

Many traffic courts still employ juries. This is unfortunate, for jurors generally tend to identify criminal prosecutions with civil suits,

and are prone to findings of "not guilty" when it appears that the complaining witness has been compensated for his damages. Juries are very sentimental about the right to drive a car, and unless the prosecution is fortunate enough to obtain, as foreman, a man whose aged mother or small daughter has been killed by a reckless driver, they are reluctant to suspend or revoke licenses. They are receptive to arguments to the effect that the accident was "unfortunate" rather than blameworthy; they tend to feel that unless the eccentric driving resulted in an accident, it could not have been dangerous, and the fact that the driver was fortunately spotted by a traffic officer and taken off the highway before he had killed someone appeals to the average juror as a circumstance of which the driver should be permitted to take advantage. Most jurors both drive and drink, and the thought of fines, jail sentences and license suspensions strikes uncomfortably close to home. Even in death cases, they seem to feel that nothing is to be gained by punishing the reckless driver; that he didn't intentionally kill the blameless pedestrian, and, after all, nothing will bring the poor fellow back.

#### X. APPEALS

Nationally, only about 10 per cent of the cases appealed from traffic courts are affirmed. This obviously challenges attention, for it seems incredible that the traffic judges could be wrong 90 per cent of the time. Even if they sat on their benches deciding cases by tossing coins, or guessing, they would, by the law of averages, be right 50 per cent of the time. Several causes of the shocking record suggest themselves. Most obvious is the delay incident to the appeal, with the attendant disappearance of witnesses and opportunity for making civil settlements. But a substantial part of the problem lies in the attitude of the appellate court judges. Few of them have made any special study of traffic law; few have any interest in the subject; few know or have any desire to learn anything about traffic engineering or traffic policing; too many persist in regarding traffic cases as unimportant, petty, "inferior court" matters, involving a violation of a "mere" city ordinance. Consequently, they permit continuances *ad nauseam*, and even when they sustain the lower court, to the extent of convicting, they frequently impose a lesser penalty than that which was imposed below, thus encouraging more appeals. This attitude is reflected in the attitude of those who have the burden of prosecuting the defendant in the appellate court. When an attorney has repeatedly put in many hours in the preparation of a drunken driving case and has spent days trying it, before an unsympathetic jury, and has won a verdict only after a hard, uphill fight, and the judge then imposes an insignificant penalty, there comes a time when he becomes discouraged and inclined to slough off

future cases as painlessly and with as little mental and physical travail as possible. This is particularly unfortunate in a state such as ours, where the court has the power to reduce the charge from one involving a mandatory license suspension (reckless driving), to a lesser charge which does not involve such suspension (negligent driving). Defendants do not often appeal because of the fine imposed below, but because of the license suspension. Thus it becomes a simple matter to dispose of the appeal by recommending to the appellate judge that defendant be permitted to "cop a plea," as the phrase goes, to the lesser offense. This practice is nothing short of pernicious. In plain language, it is merely a method of fixing a case which has already been tried. If the lower court has convicted, then plainly the prosecution should bend every effort to sustain the conviction on the appeal. But, in view of the attitude displayed by so many appellate judges, it appears that the prosecutors are more sinned against than sinning, and what has been here said about weak handling of appeals should be taken as reflecting the writer's opinion that the difficulty lies primarily with the judges, and that the prosecutors' morale is a result and not a cause. These remarks may not entirely illuminate the problem, but certainly there is enough in the bare arithmetic of appeals to indicate a need for thorough study of and attention to appellate practices now prevailing in traffic cases.

#### XI. JUDGES

Many traffic courts do dispense a satisfactory brand of justice, regardless of the handicaps under which they now operate—the poorly arranged, malodorous, noisy and dirty court rooms, the inadequate salaries, the lack of proper facilities and personnel, the general neglect from which they suffer at the hands of those whose duty it is to help improve the situation. Where the judge has the necessary knowledge of the special problems incident to traffic law enforcement and maintains a special interest in the problem, there is much that he can do to offset the handicaps, particularly those which are reflected in public disrespect for law and the judicial function. If he bears ever in mind that he must not only actually do justice, but must also *appear* to be doing so, he can do much by his demeanor on the bench, by his manner, his voice, his attitude toward those who appear before him, to send people out of his court with a sense of having been dealt with fairly. Even those convicted of serious offenses, and severely penalized, should leave the courtroom with a consciousness that they got no more than they deserved, and with a resolution to avoid future violations, not because they may again be penalized, but because, in the interest of minimum standards of public safety, such violations cannot be permitted to occur. This result depends ultimately on the judge.

Unfortunately, many of the judges who handle traffic cases have had no legal training at all. Some of them have never driven an automobile, and therefore they either regard all drivers as unmitigated menaces, or they are unable to visualize the dangerous potentialities of eccentric driving habits. This situation is dangerous. The legally untrained judge falls into a custom of disposing of his cases on a purely arbitrary basis, according to his own, private, purely personal hunches, without regard to what the supreme court of his state may have had to say in similar cases, without any understanding of what is meant by the presumption of innocence, or by the honored phrase, "beyond a reasonable doubt." He is utterly innocent of any checks on his untrammelled judicial discretion. The non-driver, even if he has legal training, is likely to handle his cases by rote, without giving proper weight to such factors as weather, width and condition of highway, volume of traffic at the time and place involved, and other matters which bear on the gravity or triviality of the case before him.

A skillful traffic judge should have a thorough training in the law. Like any judge, in any court, he must be able to interpret and apply law; he must be able to screen the testimony and give greater or lesser weight to varying bits of testimony, as they deserve; he must be able to protect human rights; he must be always alert to the danger of being influenced by testimony which is inadmissible under some rule of evidence, but which, nevertheless, is heard because there is no defense counsel in most cases to object to the question which prompts it. As a matter of necessity, he is required to listen to a great mass of testimony which is inadmissible and prejudicial, and must adopt the habit of dividing his mind into compartments; in one he puts that which he should have heard, saving it for use in arriving at a decision, and into the other he puts that which he should not have heard, trying to disregard it. This is a difficult thing for a lawyer; it is impossible for a layman.

But sound legal training is not enough. "In addition," as Mr. Warren so aptly puts it, "the traffic judge of the future must be able to evaluate and utilize accident statistics, the principles of selective enforcement, the enforcement index, spot maps and a host of other traffic engineering and law enforcement data. Safety will be his work—his means being judging and his tools a knowledge of traffic policing and traffic engineering added to a legal foundation."<sup>8</sup> This is important; the judge must be especially qualified, and if he lacks the extra-legal qualifications when he ascends the bench, he must do the studying necessary to acquire them; for his power is tremendous, his decisions are final in nearly all his cases because the amount involved usually makes it inadvisable to appeal.

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<sup>8</sup> WARREN, *TRAFFIC COURTS*, pp. 93-94.

To obtain the right kind of men to sit on traffic benches, they should be given greater security of tenure, should be paid enough so that they do not attempt to practice law as well, in order to supplement their salaries; they should be selected on a state level, rather than local, in order to remove them from local political pressures. Their courtrooms should be equal in dignity to those of the courts of general, original jurisdiction. Where there is more than one judge, as in many municipal courts, they should not alternate between the traffic calendar and the general misdemeanors, but each should specialize in one field, thus maintaining a constancy of interest and fixed responsibility.

## XII. DEFENSE COUNSEL

Except in the more serious categories of charges, defense attorneys are not usual in traffic cases. When retained, it is frequently because there is a civil suit pending, the course of which may be affected by the result in the traffic court. There are, of course, a few lawyers who will stultify themselves by accepting a retainer only to help their clients escape their just deserts; that type of man, fortunately rare, attempts to dispose of the case by putting pressure on the officer, the prosecutor and sometimes the judge. He tries to get the charge reduced before trial; he uses friendships in order to get his hands on confidential police reports before trial; he applies for repeated continuances; he sometimes pays cash for a fix, either to a venal complaining witness or to an officer weak enough to listen to his blandishments. However, in spite of much talk to the contrary, this sort of thing happens in a very small percentage of the cases which go to trial. Far more important than the shyster, in terms of practical law enforcement, is the reputable attorney, who, because of infrequent appearances in traffic court and unfamiliarity with the issues there, misconceives his function and succeeds only in injuring his client's cause. The most common error, particularly in accident cases, lies in setting up the theory of the defense on a civil basis. The argument runs in the direction of contributory negligence, or last clear chance, neither of which, of course, has any place in a criminal case. When a civil settlement has been reached, they argue that as a reason for a dismissal. When the officer was fortunate enough to see the drunken driver wending his merry way home and to get him off the highway without accident, they will emphasize the happy circumstance that no damage was done. Or they will enter a plea of "not guilty," and when the testimony overwhelmingly establishes guilt, will then argue that that particular regulation is a foolish one, and anyway, everybody habitually breaks it. Some of them attempt to try the officer instead of the defendant, or they attack the motives of the complaining witness, or they intimidate witnesses by taking advantage

of their nervousness and firing questions faster than they can be answered. Much of it is a waste of energy, misdirected talent, and the result is frequently to dissipate any "reasonable doubt" which may remain as to defendant's guilt. Yet, in spite of many sorry exhibitions, little of it appears to be deliberately obstructionist in its purpose. Rather, it appears to be a result of a lack of any real appreciation of the nature or significance of the charge or of the legal problem presented thereby. Because of his preoccupation with other branches of the practice, even the average reputable lawyer does not understand the social significance of traffic regulations, or appreciate the effect of improper activity on his part. In fact, he doesn't even recognize it as improper. He would be truer to the traditional functions of the profession, and would perform a far more valuable service for his client if, when his own investigation of the facts has convinced him that there is no legitimate defense, he would plead his client "guilty" and then proceed to bring out extenuating circumstances which would, in justice, and rightfully, result in a lightened penalty.

### XIII. WHAT TO DO WITH THE TRAFFIC VIOLATOR

Perhaps the commonest abuse of function which can be laid at the doorstep of the country's traffic judges is their proclivity for suspending sentences and remitting fines. This forgiving frame of mind probably derives from the fact that, although defendant is charged with a crime, and appears to be guilty, he is not personally of the familiar criminal type with which the judge usually deals, and the judge is therefore susceptible to a feeling that, after all, the poor fellow didn't *intend* to run through that stop light, and probably won't do it again. This attitude on the part of the judge is unobjectionable if he is dealing with the ignorant type of driver, who needs no more than an explanation of the law, and its purpose, to make him into a safer driver. Nor can it be criticized if the offender is merely unskillful; that kind is more effectively treated by being sentenced to attend a drivers' school, where his lack of coordination can probably be corrected. Fining him accomplishes no useful purpose. But the ignorant and the unskillful are minorities. A very large percentage of traffic violators are repeaters, who appear to understand no language except that of punishment; for them, suspensions and remissions merely encourage a frivolity which will some day lead them into a serious accident; these must be dealt with in such a way as to either impress upon them the necessity that they drive more carefully, or in such a way, if they do not respond to less severe penalties, as to foreclose their right to use the highways at all.

The mere fact that defendant is not a criminal type and does not

think of himself as a criminal, does not justify the attitude on the part of the judge that he has merely made a mistake. The fact remains that he has committed an offense against the safety regulations of the community, and he should be made to realize that the community, as a matter of self-protection, does not condone it. If he fails to realize the significance, or appreciate the potential dangerousness of his manner of driving, this must be brought home to him, forcefully. His treatment in court should be such that he leaves not only with a sense of having learned a lesson, but also with an attitude of cooperativeness and a desire to comply in the future. If he leaves defiant, determined only to take a better view through the rear-view mirror the next time his foot begins to feel heavy; if the net result is only to make him violate more carefully in the future, then the court is failing to accomplish its purpose. In other words, the court should not be a mill, where fines are handed out right and left in a spirit of retribution, but should endeavor to fit the penalty to the defendant. This cannot be done if the court itself lacks adequate knowledge of the nature of the problem with which it is struggling, or an adequate appreciation of the nature of the violator. The judge is dealing with potential sudden death; the fact that the violator is not of a familiar criminal type does not alter the fact that the judge is one of the public agents charged with doing something about the accident death rate. Three-fourths of all accidents are caused by a violation of some positive penal law. More than 80 per cent of accidents are the fault of drivers who have been convicted twice or more of traffic violations. There is a direct relation between enforcement and the accident rate, just as, in the public health field, there is a direct relation between enforcement against prostitution and the venereal disease rate.

There is a school of thought which argues for application of uniform penalties in traffic cases, and it is very true that a much greater degree of uniformity than now obtains, as between different judges, is a prime objective to be sought. Obviously, where there are two traffic judges in one city, one of them severe and the other lenient, or where such a situation prevails as between two courts in neighboring communities, there is a lack of a desirable degree of uniformity. However, as confined to one judge, "consistency" would seem to be a more desirable objective than "uniformity." That is, where all the circumstances are similar, or identical, penalties should be consistent. But too severe a curb would be placed on ordinary judicial discretion if it became the practice automatically to apply the precept of the Messrs. Gilbert & Sullivan. A fine of \$100.00 is a far more severe penalty for a poor man than for a rich man; loss of a driver's license means much more to a cab driver or a truck driver than it does to a clerk who lives two blocks from a bus line. For lesser offenses, such as parking violations,

and less serious moving violations, uniformity is unobjectionable. For more serious matters, individualized treatment is necessary.

#### XIV. CONCLUSION

The administration of traffic law is obviously a subject in which the bar should interest itself. The traditional guardian of the people's liberties is the organized bar. It is the bar which has kept pure the spring from which justice flows, by vigilance in such matters as the selection of judges, the insistence on basic constitutional rights and the thousands of cases in which lawyers have seen to it that persons who were unable to afford counsel have, nevertheless, been adequately represented. Certainly, any institution which deals so intimately with the liberties and basic rights of so many people as a traffic court does should be an object of the bar's solicitude. Is it too much to ask that lawyers give some thought to the problems raised in this article and lend their influence to the effort to solve them?

Specifically, there is one matter to which I should like to direct the attention of the lawyers of the state, particularly those who are members of the legislature. In cities of the first class, municipal judges are now appointed by the mayors from among the elected justices of the peace. As a consequence, a man makes his record, whether good or bad, as a municipal judge, becoming known to the people of his city by that title, and at the end of his term is forced to run for re-election as a justice of the peace. If re-elected, whether he is reappointed depends on the whim of the mayor, who is very likely the individual who has defeated the former mayor who appointed the judge four years before, and is therefore unsympathetic to retaining appointees of his predecessor. I submit that this system does not provide a desirable degree of security of tenure. Far better to let municipal judgeships stand on their own feet as such, and to let the people decide whether or not to retain their judges in the positions where they have made their records.

Those concerned with the problems dealt with in these pages have recently become much encouraged by evidences that their plight has been discerned by the organized bar and that steps are being taken to improve the situation. The Junior Bar Conference of the American Bar Association has adopted the improvement of traffic courts as its special project. Many state and local bar associations are taking an interest. In our own state, the matter is now being studied by a special committee of the Seattle Bar Association, and certain aspects of it are to be brought to the attention of the Judicial Council, with a view toward possible remedial legislation. The National Safety Council devotes much attention to traffic courts, through its Committee of Traffic Court Judges and Prosecutors. Two committees of the American Bar,

one on traffic courts as such and the other on justice of the peace courts, are now working in preparation for the 1944 convention. With so much help, from such sources, there is reason to hope that a better day in court is not far off.